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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Interconnection and Resale)

CC Docket No. 94-54

Obligations Pertaining to)

Commercial Mobile Radio Services)

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**REPLY COMMENTS OF
BELL ATLANTIC NYNEX MOBILE, INC.**

The Third Notice of Proposed Rulemaking in this proceeding¹ sought comment on whether the Commission should force CMRS providers to enter into "automatic" roaming agreements with each other. This proposal would further enlarge the obligations imposed on CMRS providers by the Commission's just-expanded CMRS roaming rule, Section 20.12(c).

The record in response to the Third Notice shows that there is no legal basis for the Commission to require automatic roaming agreements. CMRS providers have entered into automatic roaming arrangements without any rule forcing them to do so because market forces provide them with every incentive to negotiate such arrangements. Regulatory intervention is not only unneeded, but would be harmful. The record shows that mandating automatic roaming agreements would distort competition, impair CMRS fraud prevention efforts, and impose significant

¹Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, FCC 96-284, released August 15, 1996.

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costs on carriers and the Commission. Accordingly, the Commission should leave the current roaming rule as it is, and terminate this proceeding.

Commenters are almost universally opposed to a rule mandating automatic roaming agreements. Significantly, while the Third Notice offered the proposal as a way to assist new PCS carriers, most PCS providers, and both of the trade associations representing PCS interests, declined the offer.² That in and of itself is sufficient ground not to proceed with a new rule. PCS providers and other commenters provide numerous reasons why no changes to the current roaming rule should be made.

(1) Given that PCS networks are only just being licensed and deployed, and that the new CMRS-wide manual roaming rule has just taken effect, it is premature to consider further changes. The position of the Personal Communications Industry Association is representative of many commenters: "In PCIA's view, it is simply too early in the development of new PCS networks for a reliable assessment of whether an automatic roaming rule is needed" (Comments at 8.) Dual-mode technology, which is necessary for cellular-PCS roaming, is only now being developed and has not been deployed commercially. Moreover, there

²See Comments of Personal Communications Industry Association, Cellular Telecommunications Industry Association, GTE Mobilnet at 4 (noting it is a PCS as well as cellular licensee and that "there is no evidence at this time to support a finding that market forces will fail to ensure that automatic roaming agreements will be entered into"); Sprint Spectrum at 4 ("imposition of an automatic roaming requirement is premature"), Primeco Personal Communications L.P. at 8-9 (fact that automatic roaming is useful does not justify regulatory intervention absent evidence of market failure, and evidence in fact shows that market is working to achieve automatic roaming).

can be no showing that the just-adopted rule is insufficient to achieve the goals on which it was based, because the Commission has no experience with it.³

(2) An automatic roaming rule cannot pass muster under the statutory standard for imposing new CMRS regulation, because there is no market failure which could provide any basis, let alone the requisite compelling need, for regulation.⁴ To the contrary, carriers have strong incentives to enter into reciprocal roaming agreements because they want to be able to offer ubiquitous roaming services to their customers, and maximize roaming revenues from other carriers' subscribers. The record shows that carriers (including PCS entities) have in fact entered into automatic roaming agreements to meet the needs of their customers -- and without any government mandate to do so.⁵

(3) An automatic roaming rule would distort the vigorous market competition that has already evolved as carriers seek customers based on the types of roaming relationships they establish with each other. It would be harmful to subscribers' interests because it would discourage carriers from

³Comments of PCIA at 8; Comments of BANM at 3-4.

⁴Comments of CTIA at 2, 10-12 (imposing automatic roaming would be a "significant departure from the Commission's ongoing practice of allowing market forces, and not regulatory fiat, to shape the development of CMRS"); BANM at 5-7 (defining strict legal standard for new CMRS regulation).

⁵Comments of AirTouch Communications, Inc. at 2, AT&T Wireless Services, Inc. at 3, BANM at 5-7, BellSouth at 2-3, Century Cellunet at 2, GTE Mobilnet at 2, 360 Communications at 3, Rural Telecommunications Group at 3-4, Sprint Spectrum at 5-6 (citing Pacific Bell's entry into roaming agreements for its PCS network), Vanguard Cellular Systems, Inc. at 4.

negotiating varying agreements that meet each carrier's own needs.⁶

(4) Such a rule would also be potentially harmful to the industry and its customers by discouraging network buildout and technical innovation and imposing new costs. Requiring providers to enter into automatic roaming agreements would encourage the use of "lowest common denominator" technology, rather than encouraging innovation, and force carriers to pay for new accounting and billing arrangements with multiple carriers in every market.⁷

(5) While the Third Notice conceives of the rule as requiring that "similarly situated" carriers obtain "similar" roaming agreements, this is an open invitation to litigation. The Commission will inevitably have to devote new resources to the case-by-case analysis of which carriers are "similarly situated" with each other, and, if so, whether their roaming agreements contain "nondiscriminatory" terms.⁸

(6) Requiring automatic roaming will seriously impair efforts to remedy the massive public interest problem of fraudulent use of mobile phones. An enormous proportion of cellular fraud occurs through roaming, and fraud varies markedly from market to market. Carriers must have the ability to suspend or restrict

⁶Comments of AirTouch at 3, Ameritech at 2-3, CTIA at 12-14, PCS Primeco at 11-12, Rural Cellular Ass'n at 3, Rural Telecommunications Group at 6-9.

⁷Comments of Ameritech at 3-4, BANM at 7-8, BellSouth at 5, CTIA at 16-19 (quantifying substantial dollars involved in converting systems for automatic roaming agreements with all carriers), Vanguard at 7 (detailing effort and costs of loading numbering data into switches and expanding billing system capabilities); Rural Telecommunications Group at 8 ("the administrative costs of negotiating and maintaining numerous roaming agreements also disproportionately impact rural carriers").

⁸Comments of Rural Telecommunications Group at 6-7.

roaming where necessary to prevent fraud, and mandatory automatic roaming would undermine that essential protection.⁹

(7) Because the Commission has determined that CMRS providers are subject to the obligations of Sections 201 and 202 of the Act in their intercarrier agreements, a CMRS provider which believes it has been the subject of unreasonable or unlawfully discriminatory conduct has legal remedies already available to it. No new rule to provide new remedies is needed.¹⁰

A few commenters support an automatic roaming rule.¹¹ Their pleadings fall far short of presenting any legal basis for the Commission to adopt such a rule. First, these commenters do not address the above reasons why imposing such a rule is at best unnecessary and at worst harmful. Second, most of their comments are devoted to describing the benefits to subscribers of automatic roaming. That, however, is not the issue the Third Notice raises. Benefits of roaming are not in dispute. The correct issue is whether those benefits will be achieved through the marketplace, or whether the Commission must intervene, and the record clearly shows that there is no basis for intervention.

Third, these commenters complain that they have not been able to enter into specific roaming agreements. But the Alliance of Independent Wireless Operators refuses to disclose even one such instance of a refusal to enter into an

⁹Comments of AirTouch at 3, Ameritech at 3-4, BANM at 8-9, BellSouth at 4-5.

¹⁰Comments of CTIA at 7-8, GTE Mobilnet at 5, PCS Primeco at 13-14.

¹¹Comments of Western Wireless Corporation, Comments of the Alliance of Independent Wireless Operators.

intercarrier agreement, conveniently asserting that doing so "only invites further antagonism" with neighboring carriers. (Comments at 16 n. 21.) Western Wireless Corporation takes the same tack, complaining that it has been unable to enter into automatic roaming agreements with two unnamed carriers, and arguing that this vaguely-described "experience" justifies the Commission's adoption of an industry-wide mandatory rule. (Comments at 3-5.) Yet the Third Notice explicitly requested such specific evidence, noting that without it the Commission would not have a basis to adopt a rule. In any event, these commenters fail to explain why existing remedies are not sufficient to resolve their disputes.

Western Wireless does not disclose that it has entered into automatic roaming agreements with BANM's affiliate, Southwestco Wireless L.P., for its PCS as well as its cellular customers who roam in Southwestco's cellular systems in Arizona, New Mexico and Texas, including "home" roaming in the El Paso, Texas market. The Western Wireless-Southwestco automatic roaming agreement is evidence that the CMRS industry is adapting to the entry of new PCS competitors precisely in the way the Commission wants -- by negotiating agreements in the mutual interest of providers. It is also evidence as to why adopting any automatic roaming rule is unnecessary and thus cannot satisfy the rigorous preconditions imposed by Congress and the Commission for new CMRS regulation.

For the reasons set forth herein and in the comments which have already been submitted in this proceeding, the Commission should not adopt an automatic roaming obligation. It should give force to its "general policy of allowing market

forces, rather than regulation, to shape the development of wireless technologies."

(Third Notice at ¶ 26.) That policy compels termination of this proceeding without further action.

Respectfully submitted,

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